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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jean MARTINEZ et al.

Confirmation No.: 5326

Application No.: 09/880,498

Group Art Unit: 1654

Filing Date: June 13, 2001

Examiner: Michael Meller

For: GROWTH HORMONE SECRETAGOGUES

Attorney Docket No.: 87264-100

**PETITION FOR PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. § 1.705****Mail Stop Petitions**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicants hereby petition under 37 C.F.R. § 1.705 for reinstatement of the improperly reduced portion of the patent term adjustment indicated on the above-identified application.

Applicants have received the Notice of Allowance and Issue Fee Due, which indicates that the patent term adjustment to date is 73 days. A review of the Patent Application Information Retrieval ("PAIR") system indicates a Patent Office delay of 210 days for failure to issue a first office action on the merits. A delay of 137 days has been incorrectly charged against the Applicants, which appears to be in connection with the filing of a sequence listing.

This application was filed on June 13, 2001 without a signed inventor declaration. A Notice to File Missing Parts was mailed by the Patent Office on August 10, 2001. The Notice to File Missing Parts required the filing a signed declaration and payment of the surcharge for late filing of the declaration. This Notice did not include a requirement to file a sequence listing. Applicants filed the Response to File Missing Parts on October 9, 2001, which included the required signed declaration and a provision to charge the surcharge to the deposit account of Winston & Strawn.

Applicants then received a "Withdrawal of Previously Sent Notice" dated December 7, 2001, which stated that the Notice mailed on October 18, 2001 was sent in error and was being withdrawn. Applicants did not received the alleged notice that was mailed on October 18, 2001. Irregardless, the Withdrawal of Previously Sent Notice stated that the time

period for reply would run from the mailing date of the corrected Notice, and a corrected, *i.e.*, newly added, "Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures" (the "Notice to Comply") dated December 7, 2001 was attached thereto. Thus, Applicants were given two months from December 7, 2001 to reply to the Notice to Comply.

On February 20, 2002, Applicants filed a Response to Notice to Comply, including the required Sequence Listing in paper and computer readable form pursuant to 37 C.F.R. § 1.821, and the statement that the content of the paper and computer readable copies of the Sequence Listing are the same. A Petition for Extension of Time was also filed. Since the period for reply set forth in the Notice to Comply was two months and Applicants' Response was filed within the three month period set forth in (37 C.F.R. § 1.704(b)), there can be no delay attributed to the actions of the Applicants in filing the Response on February 20, 2002, and the 137 days of applicant delay should be reinstated.

The patent issuing from this application is not subject to a terminal disclaimer. Furthermore, it is respectfully submitted that Applicants did not fail to engage in reasonable efforts to conclude processing or examination of this application as set forth 37 C.F.R. § 1.704. Applicants disagree with the patent term adjustment information printed on the Notice of Allowance and Issue Fee Due, and respectfully request that the Patent Office review the record of this application to determine the correct patent term adjustment available. This correct term is believed to be a **total of 210 days extension**.

A fee of \$200 is believed to be due for this Petition. Please charge the required fee to Winston & Strawn LLP Deposit Account No. 50-1814. As this petition was required due to a Patent Office error, it is respectfully requested that the petition fee be refunded or not be charged at all. It respectfully submitted that it contravenes the basic notions of equity and fairness to charge a fee to applicants for a Patent Office error that affects the patent term to which the applicants are entitled to by law.

Respectfully submitted,

April 9, 2004  
Date

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**WINSTON & STRAWN LLP**  
Customer No. 28765

202-371-5770